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of distinguished men, erudite lawyers, powerful advocates, great judges and masterful writers." The book contains an account of the law and lawyers before the time of Edward I. ; *Aula Regis* ; the Courts of Westminster Hall ; the Justiciars ; the Judges and Serjeants of the Coif ; *Apprenticii ad Legem* ; the Inns of the Court ; and the Forms, Solemnities and Usages, kept by the Bench and the Bar. In addition there are illustrations of famous serjeants in their robes and coifs, and of the early courts in session. The whole work contains not only a history of the old order, but information on the subject that must be of interest not only to lawyers and students of the constitution and history of England, but also, now that the book is within reach as regards cost, to the public generally.

J. A. M.

A TREATISE ON MARINE, FIRE, LIFE, ACCIDENT AND ALL OTHER INSURANCES. By JOSEPH A. JOYCE. Four Volumes. San Francisco: Bancroft-Whitney Company. 1897.

In these four volumes, containing in all about four thousand pages, Mr. Joyce has endeavored "to give the profession not only a treatise, but a working book which will meet the needs, lessen the labors and save the time of all lawyers interested in questions relating to insurance, and to make it alike valuable to the practitioner, who has access to large libraries, and to the one who has not." A careful examination of Mr. Joyce's work has convinced us that his purpose has been in a great measure accomplished. He has made a careful and patient examination of the decisions and of the other authorities upon insurance law ; he has reached conclusions which are always conservative and generally sound, and he has so arranged and classified his subject that the investigation of any point upon which information is desired becomes relatively a simple matter. The reader is supplied with excellent mechanical assistance in the shape of a carefully prepared index and a well-developed scheme of title and chapter headings. One curious omission instantly challenges attention. The book contains no table of cases. The result is that one who uses the work will spend a vast amount of time if he desires to ascertain the author's views of the soundness of a given decision, or if (as is often the case) he wishes to use his recollection of the name of a particular decision as a kind of sign-post to direct him to the discussion of the principle upon which the decision proceeds.

One great merit of Mr. Joyce's work results from his recognition of the *unity* of insurance law—in the sense that he has avoided the error into which Mr. Biddle fell in excluding marine insurance from his well-known treatise. It seems impossible adequately to treat of fire insurance or marine insurance without recognizing that the contract is, in its essence, a contract to indemnify the insured in respect of his property or in respect of his rights in relation to property—whether the cause of loss be a peril of the sea or a fire on shore. All the important conclusions which follow from the

principle of indemnity are well exemplified in their relation to fire insurance by a study of marine cases—and *vice versa*. Again, much that is important is gained by a comparative study of the principles applicable to problems of property insurance on the one hand, and to problems of insurance of the person on the other. These important truths have been thoroughly grasped by Mr. Joyce, and not only is it true that his book represents a study of insurance law as a whole, but it is also important to note that his analysis and classification is subjective rather than objective—depending upon the principle involved rather than upon the accidental application of the principle to insurance upon a ship or a house or a man. It would, perhaps, be expecting too much to demand that this analysis should in all cases be thoroughly logical and exhaustive. In point of fact, there are a number of instances in which a defective analysis results in the independent discussion of the same principle in different parts of the book, sometimes with a different citation of authorities in each case. For example, in § 1523 (Volume II) there is a discussion of the scope of the clause in the marine policy granting to the insured "liberty to touch and stay." This falls under the general caption "Termination of Risk." Section 2399 contains a dissertation upon the same subject—this time under the caption "Deviation," where it more properly belongs. In neither place have we been able to find a citation or discussion of Lord Ellenborough's decision in *Williams v. Shee*, 3 Campb. 469 (1813), which is a leading authority upon the interpretation of the clause in question. It may be observed here, once for all, that the absence of a table of cases makes it difficult to state with certainty that a given decision is not cited or discussed. Again (to take another illustration at random) the discussion of wager policies in § 154 is really out of place, and is necessarily fragmentary and unsatisfactory. The chapter on "The Policy" should be confined to a discussion of matters of form; and a question of substance (like the question of what constitutes a wager) should be relegated to the earlier chapter on "The Nature of the Contract." On the whole, however, the analysis is well carried out, and represents a distinct advance from what we have been accustomed to in works on Insurance.

Passing from Mr. Joyce's preliminary chapter and from Title II, on "General Terms and Definitions," we note under Title III ("Contract and Policy") a discussion of the nature of life insurance in § 26. The conclusion stated that life insurance is under no circumstances a contract of indemnity is undoubtedly supported by the weight of authority. We could wish, however, that Mr. Joyce had done greater justice to the view so strenuously supported by Porter and others, to the effect that insurance on the life of another *is* a contract of indemnity. Chapters III and IV are occupied with a discussion of formal matters, while Chapter V is devoted to reinsurance. Referring, again, to the discussion of wager contracts in Chapter VI, we note with satisfaction the strong statement that

such contracts were enforceable at common law; Judge Selden's view in *Ruse v. Life Insurance Company*, 23 N. Y. 516 (1861), to the contrary notwithstanding. The chapter fails to trace with sufficient fulness the historical transition from the common law rule on this subject to the present rule in the United States. The author fails to make a pointed contrast between the indefiniteness of insurable interest in life under the American decisions and the definiteness of the English rule resulting from the interpretation put upon the statute of 14 Geo. III by such cases as *Halford v. Kymer*, 10 B. & C. 724 (1830). Section 152 in this same chapter is somewhat misleading. The statement that a life policy, valid at its inception, may be disposed of at the pleasure of the insured, must certainly be qualified in the many important jurisdictions where an assignee is required to have an interest. This qualification is supplied by § 914 in the second volume, but there is no cross reference to that section from § 152. Section 154 contains a not altogether satisfactory statement of what is a wager policy. The author would have increased our indebtedness to him, had he boldly stated the principles involved and condemned as unsound, the decisions which run counter to these principles. For example, in foot-note 35 on page 212, he dodges a discussion of certain remarkable Pennsylvania decisions and loses an opportunity to brand as erroneous, the intimation of the court in *Carpenter v. Insurance Company*, 161 Pa. 9 (1894) that an interest is required in an assignee even where all the premiums are paid by the assignor. In this chapter, as elsewhere, there is not enough generalization and the reader is suffered to become bewildered by disjointed statements of conflicting decisions.

Title IV deals with Parties, Agents and Beneficiaries. In discussing the status of members of Mutual Insurance Companies, the author necessarily treats of much that is not peculiar to insurance companies, but is applicable generally to partnership and corporation cases. This remark applies, for example, to the requirement that by-laws shall be reasonable, to the principles relating to the expulsion of members, the inherent power to enact by-laws, etc., etc., etc. The chapters on Agents contain a vast amount of information in regard to the decisions of the courts upon this important subject. The treatment of the subject of Beneficiaries is careful and exact, but lacks the vigor which should characterize the treatment of a subject which the courts have left in such unnecessary confusion. It may be observed that a discussion of insurable interest in a beneficiary (such as that contained in § 729) really belongs in the chapter on Insurable Interest and ought, therefore, to have been brought into juxtaposition with § 154 on wager policies. In § 858, the treatment of the rights of creditors in the proceeds of life policies is by no means adequate. The author has lost an excellent opportunity to elaborate the important conclusions reached by Professor Williston in 25 American Law Review, 185. It is to be regretted that the article was not in the hands of Mr.

Joyce when the subject was under consideration. The author's statements in regard to the rights of creditors are not only inadequate, but in one or two instances are actually misleading. For example, on page 1008 the reader is led to infer that the decision of the Supreme Court of the United States in *Central Bank v. Hume*, 128 U. S. 195 (1888), was rendered in a jurisdiction where a statute was in force protecting the policy money in the hands of a wife from the claims of the husband's creditor. Such, however, is not the fact. That most unsatisfactory decision can lay claim to no statute by way of justification. The author discusses what is really another phase of the same subject in § 2344 (under Assignment and Transfer of Policy), and there enunciates a general principle which would seem to require a modification, at least in Pennsylvania, in view of the language of the court in *McCutcheon's Appeal*, 99 Pa. 133 (1881). Under this same subject of Beneficiaries, Subdivision II contains a most useful collection of decisions in construction of various phrases often embodied in the beneficiary clause.

Title V deals with Insurable Interest. This is, of course, one of the most important parts of the work. The author's exposition of the law relating to insurable interest in property is clear and satisfactory. He also sums up the decisions upon insurable interest in life, but fails to clear up the difficulties of the subject. In § 889 we could wish for a dissertation upon the reasons for requiring an insurable interest in life. The author implies that the most important element is the presence of good faith. While we could wish that this were the law in life cases, it is hardly consistent with the many decisions in which lower courts are reversed for having left to the jury the question of good or bad faith as the determining factor in the problem. If the author had worked out some definite theory upon this point, he would have been enabled to give us a more satisfactory discussion of insurable interest as related to assignment than that which appears in § 914. The important case of *Mutual Life Insurance Company v. Allen*, 138 Mass. 24 (1884), is cited in this connection, but the problems which it raises are not carefully considered. We note the curious error in foot note 150 (page 1060), where Shadwell, V. C., is represented as having delivered the opinion of the Supreme Court of Massachusetts in this case. In § 915 proper emphasis is placed upon the importance of determining, in cases of assignment of life policies, who it is that pays the premium. It would have been well if the author had laid stress upon the same point in § 954 in the course of his discussion of the insurance of a debtor's life for the benefit of his creditors. If the debtor pays the premium, the creditor can retain out of the policy money only his debt and interest. If, however, the creditor pays the premiums, the weight of authority favors the retention by him of all the insurance money—*provided* that a proper relation exists between the amount of the debt and the amount of the policy. In regard to this last point, Mr. Joyce's discussion is

meagre. In the foot note to page 1095 he cites from the opinion of *Grant v. Kline*, 115 Pa. 618 (1887), the formula suggested in that case for determining the reasonableness of the relation. This formula is obviously worthless, as it assumes that the interest of the creditor in the debtor's life is increased to the extent of the premiums payable on the policy during the expectancy. The formula would, therefore, justify a policy indefinitely large upon the basis of a debt indefinitely small. The citation concludes with these words: "This view, however, has never been adopted by this court in any adjudicated case." The author has failed to observe that the later decision in *Ulrich v. Reinohl*, 143 Pa. 238 (1890), (which he has cited on the same page), actually adopts this formula and makes it the basis of a decision. The reader cannot help wishing that Mr. Joyce had discussed the reason for requiring a relation between the amount of interest and the amount of the policy in cases of creditor's insurance, when it is all the while asserted by the courts that the contract is not a contract of indemnity.

Title VI contains a valuable discussion of Premiums and Assessments. Title VII deals with Attachment and Duration of Risk. The description of voyage policies is a good piece of work, and the same remark applies to the discussion of the time at which the risk attaches and terminates. The implied criticism in § 1500 of *Garrigues v. Coxe*, 1 Binn. 592 (1809), is hardly justified. The weight of authority favors the view taken in that case, that a policy "at and from" attaches when the ship has been moored for twenty-four hours in good safety. Chapter XXXVIII contains a valuable statement in regard to the risk on goods and freight. Chapter XXXIX discusses Rescission and Cancellation.

Title VIII is occupied with "Subject of Insurance." Passing from the two chapters on Description of Parties and Property, we note Chapter XLII on Concealment in Marine Risks, and Chapter XLIII on Concealment in Other than Marine Risks. These chapters are, upon the whole, good. Two suggestions may be made. The first is, that "good faith" is not a sufficient basis upon which to base the duty of disclosure. This appears, from the circumstances, that an innocent failure to disclose material facts is fatal to the contract—at least in marine cases. The truth is that commercial convenience requires that the underwriter in marine cases shall act upon the convention that the facts which he knows, or ought to know—together with the facts disclosed—are all the material facts in the case. If this convention is in any case contrary to the fact, there is no contract and the underwriter is not liable, even if the insured is innocent. The second suggestion is that the discussion of concealment should have begun with some general considerations applicable to concealment in all kinds of cases—proceeding next to the consideration of concealment in marine, fire and life cases. In this preliminary discussion such cases as *Carter v. Boehm* should have been considered. As it is, this leading case is cited by Mr. Joyce as one of his most important authorities in each of

these two chapters, which, presumably, are intended to deal with distinct legal developments. The chapters on Representations and Warranties are all that could be desired, Chapter XLVIII being particularly interesting. No reason is perceived, however, why there should not be more succinctness in the summing up of the subject of seaworthiness as related to time policies than that which we find in § 2154. Perhaps we may suspect our author of having taken his material at second-hand from the text writers instead of going to the cases. Incidental justification for this suspicion is found in the fact that he bases his statement of the law of England in regard to this point upon what purports to be the language of Lord Campbell, in *Dudgeon v. Pembroke*. He even quotes from the opinion in that case, and credits the language to Lord Campbell (§ 2154). In point of fact, *Dudgeon v. Pembroke* was decided long after Lord Campbell's death. The opinion was delivered by Lord Penzance, and Lord Penzance quotes Lord Campbell's words spoken in an earlier case. Turning to Arnould on Marine Insurance, we find a summary of *Dudgeon v. Pembroke*, with an extract from the opinion given in such a way as to lead a hasty reader to believe that Lord Campbell had delivered the opinion. Is this the explanation of Mr. Joyce's error? We have here an interesting little problem of literary criticism.

Title IX discusses "Conditions Voiding the Policy." It contains, among other things, a good review of the decisions relating to the breach of the condition against alienation. Title X is occupied with a learned and exhaustive dissertation upon "Void and Illegal Insurances and Excepted Risks and Losses." Title XI, on "Risks and Losses," is a valuable piece of work, the chapters on "Abandonment and Total Loss" being particularly good. The fifty-per-cent. rule is satisfactorily discussed in Chapter XLIV.

Title XII deals with "Conditions Affecting Losses and Actions," and Title XIII contains a good summary of "Average, Adjustment and Damages." Title XIV is entitled "Rights, Remedies, Pleading, Practice and Evidence." There is here collected a mass of miscellaneous matter which belongs in various parts of the field of remedial law. Chapter LXXIV deals with "Subrogation," Sections 3540-1 contain a good statement of the effect upon the underwriters' liability of a release given by the insured to a tortfeasor.

Sections 3545 and 3551 should have been consolidated, in order to make it clear that the present form of policy has rendered inoperative the clause in the bill of lading stipulating that the carrier shall have the benefit of the insurance. In section 3556, we again regret the absence of a vigorous statement of principles. The section-heading seems to imply that there are cases in which subrogation is enforced against the mortgaged premises under a policy upon mortgagor's interest. It is conceived that such is never the case. Some semblance of authority in support of the implication is derived from the statement of *Kip v. Mutual Fire Insurance Company*, 4 Edw. Ch. N. Y. 86 (1842). In point of fact, Mr. Joyce's

statement of that case is incorrect. He fails to notice that at the time of suit the mortgagor had sold the mortgaged premises and had therefore parted with his interest. The policy in the hands of the mortgagee was therefore either a policy on the mortgagee's interest or else was wholly inoperative. In section 3569 the author loses a good opportunity to discuss the limits of the right of subrogation in connection with the decision in *Castellain v. Preston*, 11 Q. B. D. 380 (1883). On the whole, however, the chapter is a good one, and by far the best in Title XIV.

We may end this summary of Mr. Joyce's work as we began it—with the expression of our belief that the author has made a valuable contribution to the literature of Insurance Law which will be highly appreciated by the profession. The plan of the work is well conceived, and in the main has been satisfactorily carried out. The work has many blemishes, but they may, for the most part, be removed in the preparation of a second edition. It is to be hoped that when the time comes for a new edition, Mr. Joyce will reconsider some of the most important chapters in a determination not to follow the courts in their wanderings in portions of the field where judges have lost their way, but to lead the courts to sound conclusions by a path which Mr. Joyce is thoroughly competent to mark out for them.

G. W. P.

MANUAL OF MEDICAL JURISPRUDENCE. By ALFRED SWAINE TAYLOR, M. D., F. R. S. Revised and edited by THOMAS STEVENSON, M. D., London. Twelfth American Edition. Edited, with Citations and Additions from the Twelfth English Edition, by CLARK BELL, LL.D. New York and Philadelphia: Lea Brothers & Co. 1897.

At this time, when by reason of various important controversies in our courts, the intimate relation and importance of medical science to the law is being illustrated and emphasized, a new edition of a standard work of this character is indeed a timely arrival. It will be remembered, that in the eleventh American Edition, the work was brought thoroughly down to date, and the law and judicial decisions, both in Great Britain and in the United States, introduced, together with a tabulation of the cases and a reference to all the authorities. This present issue continues this work along the same line to the present date, and in view of the great development of medico-legal surgery of later years, devotes to it a chapter. So many topics are included that the scope for the discussion of each is necessarily rather limited. The author, however, begins with general remarks on Medical Evidence, and then discusses under the head of Poisoning, Corrosive and Irritant Poisons, Metallic Irritants, Vegetable and Other Irritants, and Neurotic Poisons. He then takes up in order the subject of deaths resulting from Wounds and Personal Injuries, and under Asphyxia treats deaths resulting from Drowning, Hanging, Strangulation, Suffoca-